IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2563 of 1999
To
FIRST APPEAL No. 2567 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT AND ANOTHER
Versus
THAKARSHI BHURA

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Appearance :
Mr ND Gohil, AGP for the appellants
Mr KL Dave for the respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/08/2006

ORAL JUDGMENT

These appeals are filed by the State challenging the common

judgment and order dated 23rd November 1998 passed by the learned Extra Assistant Judge in Reference cases being Land Reference Case No.285 of 1988 to 289 of 1988. By the impugned order the learned Judge of the Reference Court has partly allowed the references and granted additional compensation to the claimants. Initially, all these appeals were dismissed by the learned Single Judge of this Court vide order dated 2.12.1999 holding that the additional amount awarded by the Reference Court at the rate of Rs.926 per Are for irrigated lands and Rs.705 per Are for non-irrigated lands is the correct valuation. However, subsequently, having pointed out different orders and different amounts fixed by different Division Benches of this Court, the learned Judge has reviewed the said order in Misc. Civil Application No.388 of 2000 and all these first appeals are restored to file. Today, they are disposed of by this common judgment and order.

For the purpose of main canal of Machhundhari Irrigation Scheme the State Government decided to acquire certain agricultural lands. In the present reference the land is of village Jargali, Taluka Una. The notification under Section 4 of the Land Acquisition Act was issued on 3rd April 1986 which followed the Notification under Section 6. Thereafter, the said Land Acquisition Officer declared the award by awarding Rs.130 per Are for irrigated lands and Rs.90 per Are for non-irrigated lands. However, the claimants were not satisfied and therefore at their request Reference under Section 18 was made to the District Court. The learned trial Judge after considering the oral and documentary evidence on record granted additional amount of compensation of Rs.926 per Are for irrigated lands and Rs.705 per Are for non-irrigated lands with interest and solatium. Only one piece of land is of irrigated land, which is subject matter of Land Acquisition Reference No.285 of 1988. Rest are non-irrigated lands.

Learned AGP, Mr Gohil submitted that various pieces of land were acquired from time to time. He has, however, relied upon the decision of the Division Bench (Coram: M.R.Calla & Pradeep Kumar Sarkar, JJ.) of this Court dated 24.12.1999 rendered in First Appeal Nos.3197 of 1999 to 3257 of 1999 wherein for this very project lands of various villages, which include the present village as well, were acquired and Notifications under Section 4 were issued between 1984 to 1987. In that group of matters the Division Bench of this Court found that the fertility of village adjacent to each other is same. In the said case Reference Court granted compensation at the rate of Rs.703 per Are for non-irrigated lands and Rs.937 per Are for irrigated lands. After considering the date of Notification under Section 4 this Court has observed in paragraph 4 as under:-

> *"4. It is also admitted position before this Court that a joint purshis was submitted that the land of villages Khapat, Vadviyala, Girgadhda and Jaragli were similar and mostly the products were also similar. According to this joint purshis, these villages are situated adjoining each other within a distance of 3 to 5 kms. The Reference Court has mentioned in the order that as per the Land Acquisition Officer, the lands of villages Khapat, Girgadhda, Vadviyala and Jaragli were more fertile than other villages, but in view of the joint purshis and expert evidence of Shri Barad, the lands were taken to be similar and of the same fertility as of adjoining villages. We find that the decision has been taken in this regard on the basis of the joint purshis and once both the parties had given the joint purshis and the stand was taken that the lands of the villages Khapat, Vadviyala, Girgadhda and Jaragli were similar in situation as well as in the matter of products, the lands of these villages could certainly be taken to be identical in all respects. In this regard, the evidence including the expert evidence has been considered in detail by the Reference Court. The Reference Court has*

also considered the comparison of the market value for the land of village Kodia by the Extra Assistant Judge, Junagadh in LRC No.205/91 decided on 12th October 1998 in which case, the compensation at the rate of Rs.10,560/- per Bigha was granted for irrigated land and at the rate of Rs.7,920/- per Bigha was granted for non-irrigated land which comes to Rs.660/- and Rs.490/- respectively. This decision in the case of village Kodia in LRC No.205/91 was challenged by the State of Gujarat before this Court by filing First Appeal No.1320/99 and this appeal filed by the State was dismissed on 27th July 1999 by the Division Bench of this Court and this position is not disputed by learned Counsel for Government appearing in these cases. In LRC No.205/91 which has been relied upon by the Reference Court, the notification under Section 4 was issued on 6th February 1978 and the notification under Section 6 was issued on 31st March 1978 whereas in the instant cases, the notifications under Section 4 were issued during the period between 1984 to 1987 as aforesaid. Once the lands which were the subject matter of acquisition in LRC No.205/91 are found to be identical to the lands which are subject matter of the appeals in the present case, keeping in view the dates with regard to the issuance of the notification under Section 4, i.e. in the case of LRC No.205/91 to be of 1978 and in the instant cases during the period between 1984 to 1987, if the Reference Court has passed the order awarding compensation at the rate of Rs.937/- per Are for irrigated land and Rs.703/per Are in respect of the non-irrigated land as against the rates at which the compensation was granted in LRC No.205/91 at the rate of Rs.660/- per Are for irrigated land and at the rate of Rs.495/- per Are in respect of the non-irrigated land, by no stretch of imagination, the same could be said to be unreasonable, more particularly in view the dates of 1978 on which the notifications under Section 4 were issued in LRC No.205/91 and in the years 1984-1987 in the present cases. The decision of the Reference Court in LRC No.205/91 has also been upheld by this Court while deciding First Appeal No.1320/99 on 27th July 1999 and the appeal has been dismissed."

Mr Gohil, learned AGP submitted that in the instant case the

Notification under Section 4 was issued on 3rd January 1986 and if this Judgement is to be applied, then also the additional amount of Rs.807 per Are for irrigated lands and Rs.613 per Are for non-irrigated lands is required to be granted. Since the aforesaid judgment deals with the same land and covers the Notification under Section 4 of the Act between 1984 to 1987 the same can be treated as a basis in the present case since in the present case the Notification under Section 4 of the Act was issued on 3rd January 1986. The additional amount of compensation granted by the Reference Court is therefore required to be modified as follows. The additional amount of compensation for irrigated lands is modified from Rs.926 to Rs.807 per Are for irrigated lands and from Rs.705 to Rs.613 per Are for non irrigated lands.

All these appeals are partly allowed by fixing the additional compensation as aforesaid. The claimants will be entitled to get additional amount of compensation along with solatium and interest accordingly. Record and Proceedings be sent to the trial Court forthwith. No Cost.

(P.B.Majmudar, J.)

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